

Sample

Mark-to-Market PAE to Owner Transmitting Restructuring Plan and Commitment

Form 6.2

From: PAE
To: Owner
Transmission: Overnight Hard Copy - With Evidence of Receipt
Date: _____
Project Name: _____
FHA Number: _____ REMS ID Number _____
Section 8 HAP Contract Number: _____

Dear: (name of owner)

The Office of Multifamily Housing Assistance Restructuring (OMHAR) has approved the enclosed Restructuring Plan and Commitment for the subject property. We appreciate your input to the restructuring process and look forward to closing this transaction.

Please review this material including any conditions that may be contained in the Restructuring Commitment. For your review, we have provided the analysis supporting our conclusions. A copy of the Appraisal and the Physical Condition Assessment have already been provided. If you would like to discuss the Restructuring Plan and Commitment, please contact us. _____ (*phone number*) is the person most familiar with the proposed Restructuring Plan and Commitment.

As soon as possible, but **no later than 30 calendar days after your receipt of this letter**, please execute and return the Restructuring Commitment.

If you do not accept the Restructuring Commitment, you may appeal to the OMHAR Regional Director. Your appeal must be in writing, must be received by OMHAR within 30 calendar days after your receipt of this letter and must contain the factual basis for your appeal. Please be as specific as possible (address comparables used, adjustments made, findings made, etc.) and include appropriate supporting documentation as necessary. The name and address of the OMHAR Regional Director is: _____.

Any appeal and supporting documentation will be carefully reviewed by the Regional Director of OMHAR or a designee. A Final Decision will be made within 30 calendar days of receipt of your appeal.

If you fail to execute this commitment, or an amended Commitment that results from an appeal, or fail to close the restructuring transaction pursuant to the Commitment, the rents will be reduced without debt restructuring and you will either be offered a Section 8 Contract for Potentially Troubled projects or Section 8 assistance will be provided directly to the tenants.

Sincerely,

(PAE project manager)
(official title)

cc: OMHAR Regional Office

Enclosed: Appeal Guidance

For owners who intend to appeal:

The PAE has prepared substantial information to support their conclusions on rents, expenses and other aspects of the transaction. Your appeal should include specific information that either (1) refutes the information used by the PAE or (2) provides additional or alternative information that supports the change you desire.

Be specific

Owners should identify the specific points being appealed. It is very difficult for OMHAR to address issues identified only as “expenses are too low” or “rents are about \$30 less than they should be”. For example, identify the specific expense line items at issue.

Be precise

Identify the real issue. If you believe that the real problem is that the expenses are not realistic, focus on the expenses. Don’t focus attention on rents (“rents need to be a little higher to cover the expenses and make the property viable”) unless you believe that the market rent conclusion is inadequate. If market rents will not cover realistic expenses, there are usually options in M2M to address this circumstance where warranted. The important thing is getting the expenses “right”.

Provide specific support

Provide specific and verifiable support for appeal issues. The easiest examples are increases in taxes or insurance where invoices and individual contacts for verification can be provided. Where more complex issues are involved, providing specific information from several sources is the most helpful. For example, where the market rent determination is at issue, provide specific rent comps, with addresses and distances from the subject, and as much detailed information as you can regarding the features of these comps. Another example might include expense information from an owners’ association or other sources that the PAE and OMHAR might not have been aware of.

Identify any deficiencies

In addition to providing new information, owners should be familiar with the information that the PAEs have used to reach their conclusions on rents and expenses and should indicate where there are any deficiencies in that material. For example, the owner should identify any inadequate or inappropriate rent adjustments to the comps used by the PAE or its appraiser, or point out that a comp that was used is actually inappropriate because it is subsidized.

History alone is not adequate

Indicating that a particular expense has always been high in this property is not, in and of itself, adequate evidence that it should continue to be high. One of the goals of the M2M program is to reduce high expenses due to inefficient management. For example, an identity of interest security entity may have been employed for years that charges higher than market fees for such services. In this case, the expense should be lowered to market. The expense should also be lowered if the cause of the high cost will be changed (for example, by switching to tenant-paid utilities). However, if the expense is high

because of some feature that is particular to this property (such as the need to spend additional money on flood insurance), that feature should be specifically identified and the expense supported.

Up to date information

It is most useful to all parties if the information being used is as current as possible. For example, information on recent utilities increases (letters from utility providers, newspaper articles, contacts at utility companies) should be provided as soon as possible.